

To the Commission:

I am writing this letter to comment on docket number 04-160, the NAB attempt to limit what XM radio may broadcast. This is an attempt to further chill free speech in direct violation of the Constitution of the United States, namely the First Amendment. NAB is also trying to infringe on the right to freely associate and that certainly applies to XM radio.

XM radio enhances what local radio stations broadcast on a continuous basis instead of only during the rush hour periods.

There are currently over 1.7 million subscribers to the XM service and a large number of these listeners are over the road truck drivers, who appreciate the crystal clear reception across the country instead of having to rely on traditional surface based radio stations. These truckers need to know as soon as possible what traffic conditions are like in the areas around major cities in order to plot an alternate route around traffic tie ups. This will help ensure timely delivery of items, either to market or to automakers who rely on "Just in time" loads, where, as the members of the Commission are aware of, are time deadlined items and, if the truckloads of parts are not received in time, an assemble line will be forced to shut down, effectively closing the entire assembly plant and having a ripple effect throughout the production process.

This also goes for weather conditions that XM radio now provides via The Weather Channel and other sources. As recently seen in the central United States, there has been several major outbreaks of tornadoes. Last month and a year ago saw over 500 reported or radar indicated tornadoes. With the XM radio providing needed weather updates, many truckers were able to avoid heading into these pockets of severe weather, thus protecting their cargo from harm.

XM Radio is also privately funded, by the use of monthly subscriptions. This makes it a private organization that is similar to DirectTV and Dish Network as well as land based cable television networks. Thus, there is the right of Free Association that comes into play here. Subscribers are the ones that choose to associate with XM Radio and if the NAB is allowed to continue, they are, in effect, saying that "We will dictate who you associate with when it comes to radio...You have no say in this matter."

This cannot be permitted to occur, and I respectfully remind the members of the Commission that NAB tried and failed to kill television in the 1940s, as well as FM radio back when FM was developed and the FCC opened up the FM band.

Therefore, I respectfully request that petition 04-160 be turned away and/or denied as without merit and blatantly unconstitutional, thus, the FCC cannot entertain this petition.

The NAB is afraid of honest and fair competition, and, to protect their interests, they are pitting their right to petition government for a redress of grievances against Free Speech/Free Association. However, if you go by order of precedence as listed in the First Amendment, the Free Speech issue is placed before Petitioning Government. Free Speech must trump this petition as the government has no business and no overriding interest in stifling Free Speech, nor the restriction of a free market system that this country enjoys. NAB is, in effect, trying to do an end run around the Federal Anti-Trust Act by seeking to limit what XM can and cannot develop or do.

This is almost like Microsoft telling PC makers to either install their product and only their products or risk severe penalties, which was brought up in that nasty lawsuit.

If the NAB is allowed to curtail XM radio, it puts the economy at risk. XM radio is working on newer technology that will allow subscribers to eventually receive radar images showing what the weather is like in various places of the United States, thus allowing travelers in any type of four wheeled and up vehicle to make adjustments to their planning, even if it means pulling over for an hour or two to allow the storms to move out of the area. Without it, people's lives may be at an unnecessary risk!

Does the Commission want to put the public...taxpayers...at greater risk, or should the FCC tell the NAB that they are infringing on rights and that no amount of lobbying dollars will ever replace lives that are lost. XM Radio is going above and beyond the call of duty here in working on these new technologies. They are serving the public interest in ways that I wish traditional ground based media would remember to do. Again, I ask for this petition to be denied because it is counter-productive to the public interest.

I thank the Commission for their time.

Dan Trigona,